



JPW

PTO/SB/21 (01-09)
Approved for use through 02/28/2009. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/337,584-Conf. #9169
	Filing Date	June 21, 1999
	First Named Inventor	Arthur M. Krieg
	Art Unit	1645
	Examiner Name	N. M. Minnifield
Total Number of Pages in This Submission	Attorney Docket Number	C1039.70020US00

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): PTO Form 1449 Copies of cited references Return Receipt Postcard
<div>Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	WOLF, GREENFIELD & SACKS, P.C.		
Signature			
Printed name	Helen C. Lockhart		
Date	July 17, 2009	Reg. No.	39,248

Certificate of Mailing Under 37 CFR 1.8(a) I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
Dated: July 17, 2009	Signature: (Eileen M. Flaherty)



PTO/SB/17 (10-08)

Approved for use through 06/30/2010. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no person are required to respond to a collection of information unless it displays a valid OMB control number

Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2009		Complete if Known	
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	09/337,584-Conf. #9169
TOTAL AMOUNT OF PAYMENT		Filing Date	June 21, 1999
(\$)		First Named Inventor	Arthur M. Krieg
180.00		Examiner Name	N. M. Minnifield
		Art Unit	1645
		Attorney Docket No.	C1039.70020US00

METHOD OF PAYMENT (check all that apply)

<input checked="" type="checkbox"/> Check	<input type="checkbox"/> Credit Card	<input type="checkbox"/> Money Order	<input type="checkbox"/> None	<input type="checkbox"/> Other (please identify): _____
<input type="checkbox"/> Deposit Account		Deposit Account Number: 23/2825		Deposit Account Name: Wolf, Greenfield & Sacks, P.C.
For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)				
<input type="checkbox"/> Charge fee(s) indicated below		<input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee		
<input checked="" type="checkbox"/> Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17		<input checked="" type="checkbox"/> Credit any overpayments		

FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	330	165	540	270	220	110	
Design	220	110	100	50	140	70	
Plant	220	110	330	165	170	85	
Reissue	330	165	540	270	650	325	
Provisional	220	110	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	52	26
Each independent claim over 3 (including Reissues)	220	110
Multiple dependent claims	390	195

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims
- 20 or HP	x	=		Fee (\$) Fee Paid (\$)
HP = highest number of total claims paid for, if greater than 20.				
Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	
- 3 or HP =	x	=		
HP = highest number of independent claims paid for, if greater than 3.				

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$270 (\$135 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)

	Fees Paid (\$)
Non-English Specification, \$130 fee (no small entity discount)	
Other (e.g., late filing surcharge): 1806 Submission of an Information Disclosure Statement	180.00

SUBMITTED BY			
Signature		Registration No. (Attorney/Agent)	39,248
Name (Print/Type)	Helen C. Lockhart	Telephone	617.646.8000
		Date	July 17 2009

Certificate of Mailing Under 37 CFR 1.8(a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: July 17, 2009

Signature: (Eileen M. Flaherty)



PTO/SB/21 (01-09)
Approved for use through 02/28/2009. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/337,584-Conf. #9169
	Filing Date	June 21, 1999
	First Named Inventor	Arthur M. Krieg
	Art Unit	1645
	Examiner Name	N. M. Minnifield
Total Number of Pages in This Submission	Attorney Docket Number	C1039.70020US00

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): PTO Form 1449 Copies of cited references Return Receipt Postcard
<div>Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	WOLF, GREENFIELD & SACKS, P.C.		
Signature			
Printed name	Helen C. Lockhart		
Date	July 17, 2009	Reg. No.	39,248

Certificate of Mailing Under 37 CFR 1.8(a)	
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
Dated: July 17, 2009	Signature: (Eileen M. Flaherty)



Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number

Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).		Complete if Known	
FEE TRANSMITTAL For FY 2009		Application Number	09/337,584-Conf. #9169
		Filing Date	June 21, 1999
		First Named Inventor	Arthur M. Krieg
		Examiner Name	N. M. Minnifield
		Art Unit	1645
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Attorney Docket No.	C1039.70020US00
TOTAL AMOUNT OF PAYMENT (\$)		180.00	

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: 23/2825 Deposit Account Name: Wolf, Greenfield & Sacks, P.C.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	330	165	540	270	220	110	
Design	220	110	100	50	140	70	
Plant	220	110	330	165	170	85	
Reissue	330	165	540	270	650	325	
Provisional	220	110	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	52	26
Each independent claim over 3 (including Reissues)	220	110
Multiple dependent claims	390	195

Total Claims - 20 or HP x = **Fee Paid (\$)**

Indep. Claims - 3 or HP x = **Fee Paid (\$)**

HP = highest number of total claims paid for, if greater than 20.
HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$270 (\$135 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
<u> </u> - 100 = <u> </u> /50 = <u> </u> (round up to a whole number) x <u> </u> = <u> </u>				

4. OTHER FEE(S)

	Fees Paid (\$)
Non-English Specification, \$130 fee (no small entity discount)	
Other (e.g., late filing surcharge): 1806 Submission of an Information Disclosure Statement	180.00

SUBMITTED BY			
Signature		Registration No. (Attorney/Agent)	39,248
Name (Print/Type)	Helen C. Lockhart	Telephone	617.646.8000
		Date	July 17 2009

Certificate of Mailing Under 37 CFR 1.8(a)

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: July 17, 2009

Signature: (Eileen M. Flaherty)



DOCKET NO.: C1039.70020US00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Krieg et al.
Serial No.: 09/337,584
Confirmation No.: 9169
Filed: June 21, 1999
For: IMMUNOSTIMULATORY NUCLEIC ACID
MOLECULES
Examiner: Nita M. Minnifield
Art Unit: 1645

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 17th day of July, 2009.


Eileen M. Flaherty

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT FILED PURSUANT TO THE DUTY OF
DISCLOSURE UNDER 37 CFR §§1.56, 1.97 AND 1.98**

Madam:

Pursuant to the duty of disclosure under 37 C.F.R. §§1.56, 1.97 and 1.98, the Applicant requests consideration of this Information Disclosure Statement.

PART I: Compliance with 37 C.F.R. §1.97

This Information Disclosure Statement has been filed more than three months after the filing date of this application and after the mailing date of the first Office action, but before the mailing date of any final action under 37 C.F.R. §1.113, a Notice of Allowance under 37 C.F.R. §1.311, or an action that otherwise closes prosecution in this application.

The fee of \$180.00 as set forth in 37 C.F.R. §1.17(p) is enclosed.

07/21/2009 RFEKADU1 00000003 09337584

01 FC:1806

180.00 DP

PART II: Information Cited

The Applicant hereby makes of record in the above-identified application the information listed on the attached form PTO-1449 (modified PTO/SB/08). The order of presentation of the references should not be construed as an indication of the importance of the references.

The Applicant hereby makes the following additional information of record in the above-identified application.

The Applicant would like to bring to the Examiner's attention the following co-pending applications that may contain subject matter related to this application:

<u>Serial No.</u>	<u>Filing Date</u>	<u>Inventor(s)</u>	<u>Docket No.</u>
11/901,712	09-17-2007	Schetter et al.	*C1039.70069US01
11/983,039	11-06-2007	Rittershaus et al.	*C1037.70072US01
11/988,396	01-07-2008	Readett et al.	*C1037.70063US01
11/992,073	03-14-2008	Uhlmann et al.	*C1041.70049US01
11/992,080	03-14-2008	Bauer	*C1041.70052US01
11/992,627	03-26-2008	Jurk et al.	*C1041.70051US01
12/196,201	08-21-2008	Davis et al.	*C1037.70039US02
12/248,493	10-09-2008	Krieg et al.	*C1039.70048US26
12/287,382	10-07-2008	Bratzler et al.	*C1037.70052US02
12/336,986	12-17-2008	Krieg et al.	*C1037.70059US02
12/393,866	02-26-2009	Krieg et al.	*C1039.70035US06
12/383,824	03-25-2009	Krieg et al.	*C1039.70048US27
12/429,380	04-24-2009	Weiner et al.	*C1039.70052US01
12/472,335	05-26-2009	Krieg	*C1037.70043US01

*A copy of this reference is not provided as the Office has waived the requirement under 37 C.F.R. 1.98(a)(2)(iii) for submitting a copy of a cited U.S. patent application if it is scanned to the Image File Wrapper system and is available on Private PAIR.

PART III: Explanation of Non-English Language References and Remarks Concerning Other Information Cited

The following are remarks concerning the other information cited:

Applicants of the instant patent application are also named inventors on an issued patent US patent No. 6,207,646 B1, which was involved in an Interference (Interference No. 105,171). The instant patent application derives priority from US 6,207,646 B1. In view of the priority, Applicants have included on previous Information Disclosure Statements and the attached 1449 a listing of all of the motions filed, the judgment rendered by the Board of Patent Appeals and Interferences, appeal briefs, and appeal decision, which considered the 35 U.S.C. §135(b)(1) motion dispositive. Copies of these documents are enclosed for the Examiner's review or were cited in previously filed Information Disclosure Statements for this application. If the Examiner would like any additional information on this subject, she is encouraged to contact Applicant's representative at the number listed below.

Additionally, the instant patent application (09/337,584) was in Interference No. 105,526. Copies of papers filed with respect to that Interference are submitted herewith.

Applicant is submitting the Board Order dated January 16, 2009 (Paper No. 19) from Interference No. 105,674, in compliance with the requirement on page 8. The Board required that Applicant request the Examiner to determine whether an obviousness-type double patenting rejection should be made in the instant application over US Patent 7,402,572. A copy of US Patent 7,402,572 is being provided herewith. If the Examiner would like any additional information on this subject, she is encouraged to contact Applicant's representative at the number listed below.

On pages 9-10 of the Order, the Board considered and denied a motion by Party Raz for additional discovery relating to experimental data underlying statements made by Krieg's inventors that appear in several publications. In particular, the Examiner is directed to the discussion of the Kline 1996 and 1997 abstracts and the Kline 1998 article that appears in Raz Motion 1, Krieg Opposition 1, Raz Reply 1, Raz Motion 2, Krieg Opposition 2, Raz Reply 2, Raz Motion 3, Krieg Opposition 3, and Raz Reply 3. Out of an abundance of caution, Applicant is submitting herewith documents that may have been produced had Raz's motion been granted. These documents provide the reported details and results of four experiments in which CpG oligonucleotide alone was administered. These documents may be related to the Kline 1996 and

1997 abstracts and the Kline 1998 article. Two of these experiments are dated prior to the September 1996 date of the Kline 1996 abstract. Each of these experiments contained one control group of mice that received CpG oligonucleotide without sensitization, and in each experiment the CpG oligonucleotide reportedly had no effect on eosinophil levels. The remaining two experiments were dated October and December 1996. In these latter experiments, groups of mice were administered egg alone, egg and CpG oligonucleotide, egg followed by CpG oligonucleotide, or egg followed by control oligonucleotide. All mice then received SEA. The results, including the effects on eosinophil levels, are shown in the documents submitted herewith.

Furthermore, US patent application 09/337,584 with claims directed to the treatment of asthma was involved in a second Interference (No. 105,674). The Interference ended when Junior party Raz abandoned the contest. The Board entered judgment against Raz for Count 1. Copies of papers filed with respect to that Interference are submitted herewith. If the Examiner would like any additional information on this subject, she is encouraged to contact Applicant's representative at the number listed below.

The Examiner requested that Applicant provide a list of patents and applications in the patent family that claim asthma. The following is a list of patent and patent applications in the patent family that currently have pending claims reciting asthma. Claims are added, canceled, and amended with time. Thus Applicant doesn't warrant that the list is complete. The Examiner is encouraged to review her own records.

<u>Serial No.</u>	<u>Filing Date</u>	<u>Docket No.</u>
10/847,642	5-17-2004	C1039.70048US04
10/743,625	12-22-2003	C1039.70073US00

The following is a list of patents and patent applications in the patent family that currently have pending claims reciting allergy or a TH1 response. Claims are added, canceled, and amended with time. Thus Applicant doesn't warrant that the list is complete. The Examiner is encouraged to review her own records.

<u>Serial/Patent No.</u>	<u>Filing Date</u>	<u>Docket No.</u>
6,207,646	10-30-1996	C1039.70004US00
10/831,647	04-23-2004	C1039.70048US03
10/888,785	07-09-2004	C1039.70048US07
10/956,745	10-01-2004	C1039.70048US12
11/031,460	01-07-2005	C1039.70048US16
11/134,918	05-23-2005	C1039.70048US19
12/248,493	10-09-2008	C1039.70048US26
10/921,086	08-18-2004	C1039.70020US01

Additionally, Applicants note that US 7,402,572 (as mentioned above) and 7,524,828 (Divisional, 10/921,086) are issued.

PART IV: Remarks

Documents cited anywhere in the Information Disclosure Statement are enclosed unless otherwise indicated. It is respectfully requested that:

1. The Examiner consider completely the cited information, along with any other information, in reaching a determination concerning the patentability of the present claims;
2. The enclosed form PTO-1449 (modified PTO/SB/08) be signed by the Examiner to evidence that the cited information has been fully considered by the Patent and Trademark Office during the examination of this application;
3. The citations for the information be printed on any patent which issues from this application.

By submitting this Information Disclosure Statement, the Applicant makes no representation that a search has been performed, of the extent of any search performed, or that more relevant information does not exist.

By submitting this Information Disclosure Statement, the Applicant makes no representation that the information cited in the Statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56(b).

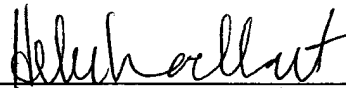
By submitting this Information Disclosure Statement, the Applicant makes no representation that the information cited in the Statement is, or is considered to be, in fact, prior art as defined by 35 U.S.C. §102.

Notwithstanding any statements by the Applicant, the Examiner is urged to form his or her own conclusion regarding the relevance of the cited information.

An early and favorable action is hereby requested.

Respectfully submitted,

By:



Helen C. Lockhart, Ph.D., Reg. No. 39,248
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

Docket No.: C1039.70020US00

Date: July 17, 2009

xNDDx